

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DAVID FARRELL : **DOCKET NO. 07-0866**

VS. : **JUDGE MINALDI**

TIMOTHY BOWLING AND DIANA : **MAGISTRATE JUDGE WILSON**
BOWLING

REPORT AND RECOMMENDATION

Before the court is plaintiffs' motion to remand, which has been referred to the undersigned United States Magistrate Judge for decision pursuant to 28 U.S.C. § 636(b)(1)(A). [doc. # 1]. For the following reasons, the motion should be granted.

This matter was removed to federal court pursuant to diversity jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441. The defendants alleged complete diversity as to all parties and an amount in controversy exceeding \$75,000.00. Notice of Removal [doc. # 2]. The plaintiff is a resident of Texas, as stated in his Petition for Damages, at introductory paragraph. [doc. # 2-2]. The defendants are "residents of Calcasieu Parish, State of Louisiana," as stated in their Notice of Removal, at paragraph 5. [doc. # 2]. The amount in controversy is stated on the face of the petition as \$200,000 plus interest, attorneys' fees and all costs of the proceeding. Petition for Damages ¶ 2 [doc. # 2-2]. No allegation is made that this Court has original jurisdiction pursuant to a federal question.

The plaintiff's motion to remand alleges that the defendants' residence in Calcasieu

Parish, Louisiana precludes remand. 28 U.S.C. § 1441(b).

Section 1441(b) states that a claim not based on the Constitution, treaties or laws of the United States “may not be removed from state to federal court if any defendant is a citizen of the State in which the [removal] action is brought.” 28 U.S.C. § 1441(b); *Getty Oil Corp v. Insurance Co. of North America*, 841 F.2d 1254 (1988). As there is no federal question at issue here, and as the defendants are residents of Louisiana, they may not remove this action from the state court to federal court.

Furthermore, the Court has received a letter from defense counsel indicating that the defendants agree to remand the case to the Fourteenth Judicial District Court for the Parish of Calcasieu, State of Louisiana. *See*, June 13, 2007, Letter [doc # 5].

Accordingly, the court finds that remand is required. 28 U.S.C. § 1447(c). For the foregoing reasons,

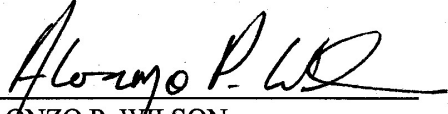
IT IS RECOMMENDED that plaintiff’s motion to remand [doc. # 1] be GRANTED.

Under the provisions of 28 U.S.C. §636(b)(1)(C), the parties have ten (10) business days from receipt of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL

CONCLUSIONS ACCEPTED BY THE DISTRICT COURT.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on July 2, 2007.


ALONZO P. WILSON
UNITED STATES MAGISTRATE JUDGE

